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VIA EMAIL

TO: Florida Sheriffs in Hurricane Milton Affected Areas
Florida Police Chiefs in Hurricane Milton Affected Areas
FROM: Ashley Moody, Attorney General

Re: Criminal Law Enforcement Tools During and After
Hurricane Milton

Dear Florida Law Enforcement Agencies,

In the last two weeks Florida has been tested by mother nature, first by storm surge and devastating wind from Hurricane Helene and now by Hurricane Milton. Most Floridians have banded together, heeded warnings, and are bracing for the latest potentially devastating storm. Millions of Floridians are evacuating at your and the government's direction. Too often, wrongdoers seek to take advantage of the chaos caused by a hurricane for their own gain. Looters put your officers' and deputies' lives at risk, redirect direly needed law enforcement response away from critical missions, and abuse our citizens at their weakest and most vulnerable. We all should have no tolerance for such lawlessness, and looters should be dealt with swiftly and harshly. In anticipation of the aftermath of Hurricane Milton—when many will be without power and homes will be unoccupied—I wanted to remind you of relevant provisions of Florida law, which should assist you in carrying out our shared mission to keep our communities safe and maintain order. Several sections of Florida law contain enhanced protections triggered by a state of emergency, like Governor DeSantis's recent state-of-emergency declaration for Hurricane Milton, *see* Exec. Order No. 24-215.

I. Burglary

Burglary includes “entering or remaining in a dwelling, a structure, or a conveyance with the intent to commit an offense therein.” § 810.02(1)(a), Fla. Stat. Burglary of a dwelling or occupied structure or conveyance is normally a second-degree felony. *Id.* § 810.02(3). But, it becomes a first-degree felony when (1) committed within a county subject to a state of emergency declared by the Governor and (2) facilitated by conditions arising from the emergency. *Id.* Similarly, though burglary of an

unoccupied structure or conveyance is normally a third-degree felony, *id.* § 810.02(4), it becomes a second-degree felony when committed in a county subject to a state-of-emergency declaration and facilitated by the emergency conditions, *id.*

Under Florida law, qualifying emergency conditions include civil unrest, power outages, curfews, voluntary and mandatory evacuations, and a reduction in the presence of or response time for first responders or homeland security personnel. *Id.* § 810.02(3), (4). When a defendant is arrested for burglary within a county subject to a state of emergency, that person may not be released until first appearance. *Id.* § 810.02(3), (4).

The definitions of the elements of the crime of burglary also change during a state of emergency. While a “structure” normally must have a roof, during a state of emergency it can be “a building of any kind or such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.” *Id.* § 810.011(1). Likewise for the definitions of “dwelling,” *id.* § 810.011(2), and “conveyance,” *id.* § 810.011(3) (encompassing “such portions [of the vehicle, ship, etc.] as exist”).

Moreover, because burglary of a dwelling is a “dangerous crime,” *id.* § 907.041(5)(a)16., a defendant arrested for that offense may not be granted nonmonetary pretrial release at first appearance if probable cause exists, *id.* § 907.041(5)(b), and a judge is required to consider whether pretrial detention is appropriate. *Id.* § 907.041(5)(d).

II. Trespass

Even if authorities cannot prove that a person intended to commit a crime within the dwelling, structure, or conveyance, that person may still be charged with trespass in a structure or conveyance. *Id.* § 810.08. Trespass in a structure or conveyance is ordinarily a second-degree misdemeanor, *id.* § 810.08(2)(a), but it is a first-degree misdemeanor if the structure or conveyance is occupied, *id.* § 810.08(2)(b), and it is a third-degree felony if the offender is armed with a firearm or other dangerous weapon, *id.* § 810.08(2)(c).

Of course, a person does not commit trespass if “authorized, licensed, or invited” to the property. *Id.* § 810.08(1). And police and prosecutors should exercise appropriate enforcement discretion to distinguish between bad actors seeking to break the law and those who are fleeing dangerous conditions in good faith.

III. Theft

This year, Governor DeSantis signed legislation increasing penalties for theft where the property is stolen from a dwelling or from the unenclosed curtilage of a dwelling. Specifically, it is now a third-degree felony where the property stolen is valued at \$40 or more, *id.* § 812.014(2)(d)1.–2., and it is a first-degree misdemeanor if the property is valued at less than \$40, *id.* § 812.014(2)(e)1.

Theft is also subject to enhanced penalties during a state of emergency. Theft of property valued between \$20,000.00 and \$99,999.99 becomes a first-degree felony when perpetrated within a county subject to a state of emergency and facilitated by conditions arising from the emergency, *id.* § 812.014(2)(b), while theft of the lesser-valued property enumerated in section 812.014(2)(c) becomes a second-degree felony under such circumstances, *id.* § 812.014(2)(c). A defendant arrested for theft within a county subject to a state of emergency may not be released until first appearance. *Id.* § 812.014(2)(b), (c).

IV. Price Gouging when Selling Essential Commodities

Within an area subject to a declaration of a state of emergency, it is unlawful for any person to rent, sell, or offer to rent or sell any essential commodity or dwelling unit—including a self-storage unit necessary for habitation as the result of an emergency—at an unconscionable price. *Id.* § 501.160(2). The State Attorneys and the Department of Legal Affairs may enforce this prohibition. *Id.* § 501.160(7). Essential commodities include those “necessary for consumption or use as a direct result of the emergency,” *id.* § 501.160(2)(a), and the unconscionability determination typically compares the offered price to the average price at which the good was sold or rented over the immediately prior 30 days, *id.* § 501.160(1)(b).

Additionally, any person who offers goods and services for sale to the public during a state of emergency while not possessing a business tax receipt is guilty of a second-degree misdemeanor. *Id.* § 501.160(8). This restriction does not apply to religious, charitable, fraternal, civic, educational, or social organizations. *Id.*

V. Unlicensed Contracting

Finally, in the wake of a hurricane, Floridians will look to rebuild; they should be able to rely on the professionalism of licensed contractors. Unlicensed contracting and falsely representing oneself as a licensed contractor are usually first-degree misdemeanors. *Id.* § 489.127(2)(a). But they are third-degree felonies when committed during a state of emergency. *Id.* § 489.127(2)(c); *see also id.* § 489.531(3)(c).

I pray that you, your personnel, and all of your families stay safe during Hurricane Milton and that this legal overview assists you in protecting our communities during this trying time and holding bad actors accountable.

Sincerely,



Ashley Moody
Florida Attorney General